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7 Attorneys for the United States of America

8 IN THE UNITED STATES DISTRICT COURT FOR THE
9 NORTHERN DISTRICT OF CALIFORNIA
0 SAN FRANCISCO DIVISION

11	ANTHONY AQUILA,)	
)	
12	Plaintiff and)	No. C-04-0443-FMS
	Counterclaimant,)	
13)	
	v.)	
14)	ANSWER OF THE UNITED STATES
	UNITED STATES OF AMERICA,)	<u>AND COUNTERCLAIM</u>
15)	
	Defendant and)	
16	Counterclaimant,)	
)	

COMES NOW the defendant United States of America by and through its counsel of record,
Kevin V. Ryan, United States Attorney for the Northern District of California, and Jay R. Weill,
Assistant United States Attorney, Chief, Tax Division, and for its answer to plaintiff's complaint,
admits, denies and alleges as follows:

22 Denies each and every allegation of such complaint not admitted, qualified or otherwise
23 specifically referred to below:

- 24 1. Admits the allegations contained in paragraph 1 of the complaint.
- 25 2. Admits the allegations contained in paragraph 2 of the complaint.
- 26 3. Admits the allegations contained in paragraph 3 of the complaint, except denies any
- 27 taxes (assessable penalties) were erroneously and illegally assessed against and collected from the
- 28 plaintiff.

CONTINUING, defendant United States of America alleges as follows:

15. Pursuant to Rule 13 of the Federal Rules of Civil Procedure, the United States of America counterclaims against Plaintiff Anthony Aquila for judgment for the balance of the federal tax assessments made against Plaintiff.

17. The Court has jurisdiction over this Counterclaim pursuant to 26 U.S.C. § 7402 and 28 U.S.C. §§ 1340 and 1345.

19. Anthony Aquila resides at 5575 Monte Verde Drive, Santa Rosa, California, within this judicial district.

20. On June 24, 2002, a delegate of the Secretary of the Treasury made an assessment in the amount of \$64,830.56, against Plaintiff Anthony Aquila pursuant to 26 U.S.C. § 6672 as a responsible officer of Gruppo D' Aquila, Inc. (GDI), who willfully failed to collect, account for or turn over withholding and F.I.C.A. taxes with respect to GDI's employees for the tax periods ending December 31, 1996, March 31, 1997 and June 30, 1997.

21. Despite timely notice and demand for payment of the federal tax assessments described in paragraphs 20 above, Plaintiff has neglected and/or refused to fully pay the assessed amounts.

21. Plaintiff is, therefore, indebted to the United States in the amount of \$32,785.51 as of May 4, 2004, plus accrued interest and penalties, less any payments or offsets.

22. The United States demands a trial by jury.

WHEREFORE, the United States respectfully prays as follows:

1. For judgment against Plaintiff Anthony Aquila and in favor of the United States in the amount of \$32,785.51 as of May 4, 2004, plus accrued interest and penalties, less any payments or offsets;

2. For its reasonable costs and attorneys' fees; and,

3. For such other and further relief as may be just and proper.

Respectfully submitted,

KEVIN V. RYAN
United States Attorney

JAY R. WEILL
Assistant United States Attorney
Chief, Tax Division